

Rule 2-2 COMMITMENT VOUCHERS

1. AUTHORITY:

24-30-202 (1) and (3), C.R.S. (State Controller Authority)
24-30-1401 C.R.S. (Professional Services)

2. DEFINITIONS:

2.1 Commitment Voucher - A document, approved by the State Controller, evidencing:

- 2.1.1 A description of goods or services being purchased or other reasons for the disbursement;
- 2.1.2 The amount to be paid;
- 2.1.3 That an obligation of the State is being charged to the appropriate account; and
- 2.1.4 That procurement requirements have been satisfied.

Commitment vouchers include an approved: purchase order, State contract, travel authorization, advice of employment, grant contract, license agreement, parking license agreement, invoice, billing, receipt, court order, other written authorization for disbursement that describes goods or services being purchased or other reasons for the disbursement and the amount to be paid, or any other approved document appropriate to the transaction prescribed by the State Controller.

2.2 Encumbrance - An amount reserved on the State financial system or an approved State agency or institution of higher education accounting system to meet a formal obligation of the State, which precedes the recording of the expenditure and the actual disbursement of funds.

2.3 Purchase Order - A document prepared and signed by an authorized employee of a State agency or institution of higher education for the purpose of encumbering funds and securing goods or services from a vendor. For the purpose of this fiscal rule, a purchase order is not considered a state contract.

3. RULE:

3.1 No disbursement of funds shall be made by any State agency or institution of higher education unless it is supported by a commitment voucher. Agencies and institutions of higher education are responsible for ensuring that:

- 3.1.1 Proposed expenditure is authorized by the appropriation and required approvals have been received;
- 3.1.2 Prices or rates are fair and reasonable;
- 3.1.3 Amount of the expenditure is within the unencumbered balance;
- 3.1.4 Commitment voucher adequately defines the requirements and respective performance obligations and pricing;
- 3.1.5 Terms and conditions represent a commercially reasonable allocation of risks between the parties;
- 3.1.6 Commitment voucher complies with applicable statutes, executive orders, rules and policies; approvals have been received;
- 3.1.7 The commitment voucher, if a purchase order or contract, is encumbered. Encumbrance is not required for interagency agreements between State agencies and institutions of higher education that are charged to a special line item appropriation dedicated to that commitment, routine internal services, and other items specified in the State Controller's policy on Situations Where Purchase Order is Not Required.

4. DOLLAR LIMITS AND REQUIREMENTS

4.1 <u>Dollar Limit</u>	<u>Requirements</u>
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Goods:

- | | |
|---------------------|----------------------------------|
| • \$5,000 and below | Any commitment voucher |
| • Above \$5,000 | Purchase Order or State Contract |

Services:

- | | |
|------------------------|----------------------------------|
| • \$5,000 and below | Any commitment voucher |
| • \$5,000 to \$100,000 | Purchase Order or State Contract |
| • Above \$100,000 | State Contract |

Capital Construction/Controlled Maintenance

- See Fiscal Rule 4-1

Professional Services

- State contract required for architectural services, engineering services, land surveying, industrial hygienist services, and landscape architectural services.

Leasing and License of Real Property

- State contract required for leasing of or license for use of land, buildings, or other space when term is more than 30 days.

4.2 State contracts may be appropriate in situations other than those described above, when other commitment vouchers are not sufficient to adequately protect the interests of the State. Questions as to the proper form of commitment voucher should be referred to the Office of the State Controller or the Attorney General's Office.

4.3 Purchase orders and contracts are not required for certain situations, such as payroll related disbursements. See complete list of these situations in the State Controller's policy on Situations Where Purchase Order is Not Required.

5. STATE PURCHASE ORDERS

5.1 A State agency or institution of higher education shall use the standard terms of the purchase order included in the appendix to this fiscal rule.

5.2 Changes to the standard terms of the purchase order must be approved by a procurement officer or delegate in fully delegated agencies or by the State Purchasing Office for partially delegated agencies or by the State Controller, except that:

5.2.1 No changes to the provisions governing Changes, Vendor Offset, Assignment and Successor, Independent Contractor, or Funds Availability may be made without State Controller approval;

5.2.2 No changes to the Indemnification, Choice of Law, and Non-discrimination provisions may be made without legal review and written approval by the Attorney General or designated reviewing Assistant or Special Assistant Attorney General.

5.3 A State agency or institution of higher education issuing a purchase order to another State agency or institution of higher education may change or delete any of the standard terms of the purchase order included in Appendix A to this fiscal rule.

6. STATE CONTRACTS

State Contracts shall comply with the requirements of this fiscal rule and Fiscal Rule 3-1.

7. STATUTORY VIOLATIONS

7.1 Statutory Violation – Occurs when a liability is incurred by the State or a payment is made without a purchase order or a State contract when one is required as described below.

7.2 Ratification - The State Controller may ratify the expenditure provided that:

7.2.1 The prices or rates are fair and reasonable;

7.2.2 The amount of the expenditure is within the unencumbered balance;

7.2.3 The State agency or institution of higher education provides a written explanation in accordance with the State Controller policy on statutory violations. See State Controller policy on Processing Commitment Vouchers that Violate State Statutes for further details;

7.2.4 The parties did not act in bad faith or in a fraudulent manner.

7.3 Agencies and institutions of higher education shall not release vendor payments prior to ratification by the State Controller. Any statutory violation not ratified by the State Controller shall be the personal obligation of the person who incurred the obligation.

7.4 All state agencies and institutions are required to maintain an adequate system of internal controls to identify an occurrence, prevent or minimize violations, and implement this policy.

8. ADVANCE PAYMENT

8.1 Advance Payment – A payment that is made prior to the receipt of goods or services.

8.2 Generally advance payment of financial obligations is not permitted. State contracts and other commitment vouchers shall not provide for advance payment of goods and or services, unless it is an established industry standard or unless the advance payment provides a benefit to the State at least equal to the cost and risk of the payment. Any advance payment made pursuant to the terms of a State contract or other commitment voucher requires the written approval of the State Controller, or a delegate, except in the instances included in the State Controller's policy on Advance Payments.

9. EMERGENCIES

9.1 Emergency - A situation that creates an immediate threat to public health, welfare, or safety, the functioning of government, or preservation or protection of property requiring immediate response.

9.2 Procurement – If the response to the emergency requires an immediate expenditure for goods or services and there is insufficient time to issue, or obtain a written waiver of the requirements for issuance of a commitment voucher pursuant to this fiscal rule, the head of an agency or institution, or his/her designee, may acquire goods and services necessary to respond to an emergency without execution of a State contract or purchase order, provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. Disbursement may be made upon receipt of invoices, receipts, or other statements describing goods or services being purchased and the amount to be paid.

9.3 Follow up - As soon as practicable, and in no event later than the end of the next business day, a written notification of the circumstances and the nature and value of the commitments shall be made by the chief financial officer of the agency or institution of higher education to the State Controller. Commitment vouchers shall be executed as soon as possible to define future performance obligations where required by the fiscal rules.

10. VENDOR AGREEMENTS

10.1 Vendor Agreement - A form provided by a vendor containing contractual terms and conditions relating to the goods and/or services to be provided.

- 10.2 A vendor agreement, including an on-line vendor agreement, shall not be executed in lieu of a purchase order or State contract, where one is required, unless it meets the conditions in the State Controller's Policy on Vendor Agreements.
- 10.3 Chief fiscal officers or procurement directors may authorize individuals to execute vendor agreements up to \$5,000, when there is no requirement that a State contract be executed for the purchase of the goods and/or services and all of the conditions apply as outlined in State Controller's policy on Vendor Agreements.
- 10.4 Agencies and institutions of higher education must delete or nullify by specific reference all conflicting or impermissible terms if a vendor agreement is attached as an exhibit to a State purchase order or State contract.

Purchase Order Terms and Conditions

1. **Offer/Acceptance.** If this purchase order ("PO") refers to your bid or proposal, then this PO is an ACCEPTANCE of your OFFER TO SELL in accordance with the terms and conditions of the IFB/RFP, as stated in your bid. If no bid or proposal is referenced, this PO is an OFFER TO BUY, subject to your acceptance, which must be demonstrated by either your performance of this PO or by a formal acknowledgment in writing. Any COUNTER-OFFER TO SELL is automatically construed as a CANCELLATION of this PO unless a change order is issued accepting a counter-offer. In the event vendor form(s) or part(s) of forms are included in, or as an attachment to, any bid, proposal, offer, acknowledgment, or otherwise, vendor agrees that, in the event of inconsistencies or contradictions, the terms and conditions of the solicitation document and this PO shall supersede and control over those contained in vendor's form(s) regardless of any statement to the contrary in such form(s). Unless the purchasing agent specifically agrees in writing through overt reference or other express written indication of assent, terms and conditions on vendor forms regarding choice of law, venue, warranty disclaimer or exclusion, indemnification or limitation of liability shall be of no effect.

2. **Safety Information.** All chemicals, equipment and materials proposed and/or used in the performance of this PO must conform to the standards required by the William-Steiger Occupational Safety and Health Act of 1970. Bidders must furnish all Material Safety Data Sheets (MSDS) for any regulated chemicals, equipment or hazardous materials at the time of delivery.

3. **Changes.** Vendor agrees to furnish products and/or services in strict accordance with the specifications, and at the price set forth for each item. Nothing in this PO may be added to, modified, superseded or otherwise altered except in writing signed by an authorized representative of the agency purchasing office and acknowledged by vendor. Each shipment received or service performed shall be only upon the terms contained in this PO, notwithstanding any terms contained in any invoice or other act of vendor other than acknowledgment of a written change order to this PO.

4. **Delivery.** Unless otherwise specified in the solicitation or in this PO, delivery shall be FOB destination. In its acceptance of any quotation offer, the agency is relying on the promised delivery date, installation, or service performance as material and basic to its acceptance. In the event of vendor's failure to deliver or perform as and when promised, the agency reserves the right to cancel its order, or any part thereof, without prejudice to its other rights, and vendor agrees that the agency may return all or part of any shipment so made, and may charge vendor with any loss or expense sustained as a result of such failure to deliver or perform as promised. Time is of the essence.

5. **Rights in Data, Documents, Computer Software or Other Intellectual Property.** Unless otherwise agreed in writing, any software, research, reports, studies, data, photographs, negatives or other documents, drawings or materials delivered by vendor in the performance of its obligations under this PO shall be the exclusive property of the State. The ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works.

6. **Quality.** The State will be the sole judge in determining "equals" with regard to quality, price and performance. All products delivered shall be newly manufactured and of the manufacturer's current model, unless otherwise specified.

7. **Warranties.** All provisions and remedies of the Uniform Commercial Code ("UCC") relating to both implied and expressed warranties are herewith referred to and made a part hereof and are in addition to any warranties stipulated in the specifications.

8. **Inspection and Acceptance.** Final acceptance is dependent upon completion of all applicable inspection procedures. Should the products or services fail to meet any inspection requirements,

the agency may exercise all of its rights, including those provided in the UCC. The agency reserves the right to inspect services provided under this PO at all reasonable times and places. "Services" as used in this clause includes services performed or tangible material produced or delivered in the performance of services. If any of the services do not conform with PO requirements, the agency may require vendor to perform the services again in conformity with PO requirements, with no additional payment. When defects in the quality or quantity of service cannot be corrected by re-performance, the agency may (i) require vendor to take necessary action to ensure that the future performance conforms to PO requirements and (ii) equitably reduce the payment due vendor to reflect the reduced value of the services performed. These remedies in no way limit the remedies available to the agency in the termination provisions of this PO, or remedies otherwise available at law or in equity.

9. **Cash Discount.** The cash discount period will start from date of receipt of acceptable invoice, or from date of receipt of acceptable products/services at the specified destination by an authorized agency representative, whichever is later.

10. **Taxes.** The State agency, as purchaser, is exempt from all federal excise taxes under Chapter 32 of the Internal Revenue Code [No. 84-730123K] and from all State and local government use taxes [CRS 39-26-14(a) and 203, as amended]. Tax exempt numbers for the specific agency may be found elsewhere in this PO. Vendor is hereby notified that when materials are purchased for the benefit of the State, such exemptions apply except that in certain political subdivisions (e.g., City of Denver) vendor may be required to pay sales or use taxes even though the ultimate product or service is provided to the State. These sales or use taxes will not be reimbursed by the State.

11. **Prompt Payment.** State law and regulations provide that vendors will be paid within 45 days after receipt of products or services and a correct notice of amount due, unless otherwise agreed to by contract or special conditions of the PO. A State liability not paid within 45 days is considered delinquent and, unless otherwise agreed to, interest on the unpaid balance shall be paid beginning with the 46th day at the rate of 1% per month until paid in full. A liability shall not arise if a good faith dispute exists as to the agency's obligation to pay all or a portion of the liability. Vendors shall invoice the agency separately for interest on delinquent amounts due. The billing shall reference the delinquent payment, the number of days interest to be paid and the applicable interest rate. [CRS 24-30-202(24), as amended.]

12. **Vendor Offset.** Pursuant to CRS 24-30-202.4, as amended, the State Controller may withhold payment for debts owed to State agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in Article 21, Title 39, CRS; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the unemployment compensation fund; and (e) other unpaid debts, found to be owing to the State or its agencies by final agency determination or reduced to judgment, as certified by the State Controller.

13. **Assignment and Successors; Antitrust Claims.** Vendor shall not assign rights or delegate duties under this PO, or subcontract any part of the performance required under this PO, without the express, written consent of the State, which shall not be unreasonably withheld. This PO shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Assignment of accounts receivable may be made only with written notice furnished to the purchasing agency or institution.

14. **Indemnification.** In the event any article sold or delivered under this PO is covered by any patent, copyright, trademark, or application therefor, vendor will indemnify and hold harmless the State from any and all loss, liability, cost, expenses and legal fees incurred on account of any claims, legal actions or judgments

arising out of manufacture, sale or use of such article in violation, infringement or the like of rights under such patent, copyright, trademark or application. If this PO is for services, to the extent authorized by law, vendor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related expenses, incurred as a result of any act or omission by vendor, or its employees, agents, subcontractors or assignees, arising out of or in connection with performance of services ordered by this PO.

15. INDEPENDENT CONTRACTOR. VENDOR SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE. NEITHER VENDOR NOR ANY AGENT OR EMPLOYEE OF VENDOR SHALL BE OR SHALL BE DEEMED TO BE AN AGENT OR EMPLOYEE OF THE STATE. VENDOR SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX WITHHOLDING INCLUDING ALL FEDERAL AND STATE INCOME TAX AND LOCAL HEAD TAX ON ANY MONIES PAID PURSUANT TO THIS PO. VENDOR ACKNOWLEDGES THAT

VENDOR AND ITS EMPLOYEES ARE NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS VENDOR OR THIRD PARTY PROVIDES SUCH COVERAGE AND THAT THE STATE DOES NOT PAY FOR OR OTHERWISE PROVIDE SUCH COVERAGE. VENDOR SHALL HAVE NO AUTHORIZATION EXPRESS OR IMPLIED TO BIND THE STATE TO ANY AGREEMENT, LIABILITY, OR UNDERSTANDING, EXCEPT AS EXPRESSLY SET FORTH HEREIN. VENDOR SHALL PROVIDE AND KEEP IN FORCE WORKERS' COMPENSATION AND UNEMPLOYMENT COMPENSATION INSURANCE IN THE AMOUNTS REQUIRED BY LAW, AND SHOW PROOF OF UPON REQUEST, AND SHALL BE SOLELY RESPONSIBLE FOR ITS ACTS AND THOSE OF ITS EMPLOYEES, AND AGENTS.

16. Communication. All communications, including reports, notices, and advice of any nature, concerning administration of this PO, prepared by vendor for the agency's use, must be furnished solely to the purchasing agent within the agency purchasing office.

17. Compliance with Laws. Vendor agrees to comply with all applicable federal and State laws, regulations and policies, as amended, including those regarding discrimination, unfair labor practices, anti-kick-back and collusion.

18. Americans with Disabilities Act (ADA) Requirements. If this solicitation contemplates the provision of services to the public, vendor shall, in addition to any other requirements under Title 11 of the ADA, comply with the Title 11 requirements of the ADA regarding the accessibility of State services and programs, as an explicit requirement. Vendor assures that, at all times during the performance of any resulting PO, no qualified individual with a disability shall, by reason of that disability, be excluded from participation in, or be denied benefits of, services, programs, or activities performed by vendor for the benefit of the State.

19. Insurance. Vendor shall obtain, and maintain at all times during the term of this PO, insurance as specified in the solicitation or order, and shall provide proof of such coverage.

20. Termination For Default/Cause. a. Except as otherwise agreed, the UCC shall govern in the case of goods. In the case of services, if vendor refuses or fails to timely perform any of the provisions of this PO, with such diligence as will ensure its completion within the time specified in this PO, the purchasing agent may notify vendor in writing of non-performance, and if not promptly corrected within the time specified, such agent may terminate vendor's right to proceed with the PO or such part thereof as to which there has been delay or a failure to properly perform. Vendor shall continue performance of the PO to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services elsewhere. Payment for completed services performed and accepted shall be

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at the PO price.

b. In the case of remedies exercised under this paragraph for services, or analogous remedies exercised under the UCC for in goods, the purchasing agency may withhold amounts due to vendor as the purchasing agent deems necessary to reimburse the purchasing agency for the excess costs incurred in curing, completing or procuring similar goods and services.

c. In the case of either goods or services, vendor shall not be in default by reason of any failure in performance of this PO in accordance with its terms, if such failure arises out of acts of God; acts of the public enemy; acts of the State or any governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather.

d. If after rejection, revocation, or other termination of vendor's right to proceed under the provisions of the UCC or this clause, it is determined for any reason that vendor was not in default under the provisions of this clause, or that the delay was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for convenience clause.

21. Termination For Convenience. a. If not accepted by written acknowledgment, this PO may be canceled by written or oral notice to vendor prior to shipment of goods or beginning of performance of services.

b. Unless otherwise agreed in writing, in addition to the rights and remedies governing goods in the UCC, the purchasing agent may, when the interests of the purchasing agency so require, terminate this PO in whole or in part for the convenience of the agency or institution. The purchasing agent shall give written notice of the termination to vendor specifying the part of the PO terminated and when termination becomes effective. Upon receipt of notice of termination, vendor shall incur no further obligations except to the extent necessary to mitigate costs of performance. In the case of services or specially manufactured goods, the State shall pay reasonable settlement expenses, the PO price or rate for supplies and services delivered and accepted, the reasonable costs of performance on unaccepted supplies and services, and a reasonable profit for that unaccepted work, in accordance with the cost principles promulgated in accordance with CRS 24-107-101, as amended. In the case of existing goods, the State shall pay reasonable settlement expenses, the PO price for goods delivered and accepted, reasonable costs incurred in preparation for delivery of the undelivered goods, and a reasonable profit for that preparatory work. The amount of the termination liability under this paragraph shall not exceed the amount of the PO price plus a reasonable cost for settlement expenses. Vendor agrees to submit a termination proposal as well as reasonable supporting documentation, cost and pricing data, and a certification as required CRS 24-106-101, as amended, upon request of the purchasing agent.

22. Purchase Order Approval. This PO shall not be valid unless it is executed by the purchasing agent for the purchasing State agency or institution. The State shall have no responsibility or liability for products or services delivered or performed prior to proper execution hereof.

23. Fund Availability; Federal Funds Contingency. Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. If this PO is funded in whole or in part with federal funds, this PO is subject to and contingent upon the continuing availability of federal funds for the purposes hereof. If this PO contemplates the purchase of goods to be delivered in a single installment, the State represents that it has set aside sufficient funds to make payment under this PO in accordance with its terms.

24. Choice of Law. This PO is made in, and the laws of the State of Colorado shall govern, in connection with the formation, performance and the legal enforcement of, this PO. Unless otherwise specified in the solicitation or this order, venue for any judicial action arising out of or in connection with this PO shall be in Denver, Colorado. Vendor shall exhaust administrative remedies

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in CRS 24-109-106, as amended, prior to commencing any judicial action against the State.

25. **Uniform Commercial Code.** All references in this PO to the UCC shall mean the UCC as adopted by the State of Colorado at Title 4, Colorado Revised Statutes, as amended.

26. **Non-discrimination.** Vendor agrees to comply with the letter and spirit of all applicable State and federal laws respecting discrimination and unfair employment practices.

27. **[Not applicable to Intergovernmental POs] ILLEGAL ALIENS – PUBLIC CONTRACTS FOR SERVICES AND RESTRICTIONS ON PUBLIC BENEFITS.** a. Vendor certifies that it shall comply with the provisions of CRS 8-17.5-101 et seq. Vendor shall not knowingly engage an illegal alien to perform work under this PO or enter into a contract or PO with a subcontractor that fails to certify to vendor that the subcontractor shall not knowingly engage an illegal alien to perform work under this PO. Contractor certifies, warrants, and agrees that it (i) has confirmed the employment eligibility of all employees who are newly hired for

employment in the United States through participation in the Employment Eligibility Verification Program/Basic Pilot and (ii) otherwise will comply with the requirements of CRS 8-17.5-102(2)(b). Vendor shall comply with all reasonable requests made in the course of an investigation under CRS 8-17.5-102. Failure to comply with any requirement of this provision or CRS 8-17.5-101 et seq., shall be cause for termination for breach and vendor shall be liable for damages.

b. Vendor, if a natural person eighteen (18) years of age or older, hereby swears or affirms under penalty of perjury that he or she (i) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of CRS 24-76.5-101 et seq., and (iii) shall produce one form of identification required by CRS 24-76.5-103 prior to the effective date of this PO.

